

## REMARKS

The Examiner has required a restriction of the pending claims to one of the following groups:

I. Claims 1 to 7 and 33 to 35, drawn to a nucleic acid encoding a MCOLN1 polypeptide, classified in class 536, subclass 23.5.

II. Claims 8 to 10, drawn to a MCOLN1 polypeptide, classified in class 530, subclass 350.

III. Claim 11, drawn to an antibody, classified in class 530, subclass 322.2.

IV. Claims 12 to 22, drawn to a method of genetic diagnosis, classified in class 435, subclass 6.

V. Claims 23 to 28, drawn to a kit comprising oligonucleotide probes, classified in class 536, subclass 24.31.

VI. Claims 29 to 32, drawn to a method of gene therapy, classified in class 514, subclass 44.

VII. Claims 36 to 38, drawn to a binding assay, classified in class 436, subclass 501.

In order to be fully responsive to the Requirement for Restriction, Applicants hereby provisionally elect, with traverse, to prosecute claims 1 to 7 and 33 to 35, corresponding to Group I.

Applicants respectfully traverse the Requirement for Restriction and reserve the right to petition therefrom under 37 C.F.R. § 1.144. Applicants respectfully request reconsideration of the Restriction Requirement. In particular, Applicants

respectfully request reconsideration of the Restriction Requirement to allow prosecution of Groups IV and V with elected Group I.

Under Patent Office examining procedures, "if the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." See, M.P.E.P. § 803 (emphasis added)

Further, pursuant to 37 C.F.R. § 1.141 (b), "the process of using [a claimed product] may be joined with the claims directed to the product and the process of making the product even though a showing of distinctiveness between the product and the process of using the product can be made."

Applicants respectfully submit that Groups I, IV and V designated by the Examiner fail to define products and methods for using such products that warrant separate examination and search. The present claims represent a web of knowledge and continuity of effort that merits examination in a single application.

A thorough search of the subject matter of claims of claims 1-7 and 33-35 of Group I would necessarily include a search of the subject matter of Groups IV and V as they all involve a nucleic acid encoding MCOLN1 polypeptide.

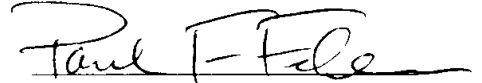
Hence, it is believed that a single search of the features of the product recited in the claims of Group I would necessarily and inescapably require a search of the subject matter of Groups IV and V. Accordingly, Applicants respectfully request that the Examiner withdraw the Requirement for Restriction.

## CONCLUSION

Therefore, in view of the above remarks, it is respectfully requested that the restriction requirement be reconsidered.

If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul F. Fehlner", written over a horizontal line.

Paul F. Fehlner, Ph.D.

Reg. No. 35,135

Attorney for applicants

Darby & Darby, P.C.  
Post Office Box 5257  
New York, NY 10150-5257  
Phone (212) 527-7700